

## ENHANCED ENERGY PRODUCTION

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**House Bill 4885 (Substitute H-2)**  
**Sponsor: Rep. Aric Nesbitt**

**House Bill 5255 (Substitute H-1)**  
**Sponsor: Rep. Thomas F. Stallworth III**

**House Bill 5254 (Substitute H-2)**  
**Sponsor: Rep. Rick Outman**

**House Bill 5274 (Substitute H-1)**  
**Sponsor: Rep. Peter Pettalia**

**Committee: Energy and Technology**  
**Complete to 2-12-14**

## A SUMMARY OF HOUSE BILLS 4885, 5254, 5255, AND 5274 AS REPORTED FROM COMMITTEE ON 2-4-14

House Bill 4885 would reduce the severance tax on oil and gas production achieved through carbon dioxide secondary or enhanced recovery projects.

House Bill 5254 would revise the definition of "pipeline" to include a pipeline used to transport carbon dioxide (CO<sub>2</sub>) substances.

House Bill 5255 would allow authorized entities to acquire rights-of-way for transport, installation, and maintenance of CO<sub>2</sub> pipelines by eminent domain for CO<sub>2</sub> substances.

House Bill 5274 would amend the title and various provisions of Public Act 16 of 1929 that currently apply to crude or petroleum so that they would also apply to CO<sub>2</sub> substances. The bill would define "carbon dioxide substance."

Tie-bars: House Bills 5254, 5255 and 4885 are tie-barred to each other. House Bill 5274 is tie-barred to House Bills 5254 and 5255. A tie-bar means that a bill cannot take effect unless each bill to which it is tie-barred is also enacted into law.

The bills are described in more detail below.

**House Bill 4885** would amend the Michigan Severance Tax Act (MCL 483.2a), which levies a severance tax on gas and oil production. Under the act, producers or purchasers must report monthly on the oil and gas severed from the soil and pay a tax based on the value of the gas or oil extracted. Regardless of the extraction method used, producers currently pay a severance tax of 6.6 percent of the gross cash market value for oil (4 percent if from a stripper oil well) and 5 percent of the gross cash market value for natural gas.

Under the bill, for carbon dioxide (CO<sub>2</sub>) secondary or enhanced recovery projects approved after March 30, 2014, a lower severance tax rate would apply to natural gas or oil extracted from a "carbon dioxide secondary or enhanced recovery project."

Specifically, the monthly severance tax required to be paid by each producer would be reduced to 4 percent of the gross cash market value for either oil or natural gas.

"Carbon dioxide secondary or enhanced recovery project" would be defined to mean operations designed to increase the amount of oil or natural gas recoverable from a reservoir, as by injection of CO<sub>2</sub>, either alone or as a primary component of a mixture with other substances, as long as the project had been approved as a secondary or enhanced recovery project by order of the Supervisor of Wells under the authority of Part 615 or 617 of the Natural Resources and Environmental Protection Act.

**House Bill 5254** would amend Section 2a of Public Act 16 of 1929 (MCL 483.2a), which regulates the transportation and sale of crude oil and petroleum through pipelines. Section 2a was added in 1997 to establish certain requirements for persons constructing a crude oil or petroleum pipeline or facility. That act ensures, in part, that a property owner's land is returned to its original condition, that facilities, and resources are repaired or replaced, and that the property owner is compensated for lost productivity of the land.

Currently, the definition of "pipeline" contained in Section 2a means a pipeline used or to be used to transport crude oil or petroleum. The bill would add to this definition transporting *carbon dioxide substances*.

The bill would also apply current regulations regulating the repairs or compensation to landowners whose land was impacted by the construction or maintenance of pipelines to include compensation for property damage related to *laying pipelines*.

**House Bill 5255** amends Section 2 of Public Act 16 of 1929 (MCL 483.2). Currently, the act authorizes a corporation, association, or person to acquire necessary rights-of-way for transporting petroleum by pipeline via eminent domain. Instead, the bill would allow the authorized entities (which would be expanded to include a partnership, governmental entity, or other legal entity under House Bill 5274) to condemn *property* by eminent domain and *allow the use of the state highways to acquire necessary rights-of-way* for any of the following purposes:

- To transport crude oil or petroleum or CO<sub>2</sub> substances.
- To locate, lay, construct, maintain, and operate pipelines for the above purposes.

In addition, the act currently requires the condemnation (eminent domain) proceedings to be conducted *in accordance with the same procedure and in the same manner as is provided by the laws of this state for the condemnation of right of ways by railroad companies*. The highlighted portion would be eliminated and proceeding would instead be required to be conducted as provided in the Uniform Condemnation Procedures Act.

**House Bill 5274** also amends Public Act 16 of 1929 (MCL 483.1 et.al). It would include certain substances consisting primarily of carbon dioxide within the act's purview. The bill would amend the title to specify that the act would also regulate the business of

certain substances consisting primarily of carbon dioxide through pipelines, as well as regulate its purchase and storage.

The bill would also revise the following sections that currently apply to crude oil and petroleum to apply also to *carbon dioxide substances*:

\*\* Section 1: Specifies that the right of an entity to transport or to buy or sell these substances (crude oil, petroleum, or CO<sub>2</sub> substances), to engage in the business or operations of the substances, or to locate the necessary pipelines along or under any present or future highway in the state, or have or possess the right of eminent domain, is authorized by and subject to the provisions of the act.

The bill would define "carbon dioxide substance" to mean a gaseous or liquid substances, consisting primarily of carbon dioxide, that will be put in storage or that have been or will be used to produce hydrocarbons in secondary or enhanced recovery operations.

"Person" would be defined as an individual, partnership, corporation, association, governmental entity, or other legal entity.

\*\* Section 3: Authorizes the MPSC to control, investigate, and regulate entities carrying or transporting the substances through pipelines; exercising or claiming the right to engage in the business of piping, transporting, or storing the substances; or engaging in the business of buying, selling, or dealing in the substances within the state. Producers and refiners of crude oil and petroleum are exempted from regulation under this provision; the bill would extend the exemption to refiners or producers of CO<sub>2</sub> substances.

\*\* Section 4: Defines "common purchaser" and requires a common purchaser to purchase substances without discrimination. The bill includes CO<sub>2</sub> substances.

\*\* Section 5: Defines "common carrier" and requires a common carrier engaged in the business of carrying or transporting the substances to do so without discrimination, directly or indirectly. The bill includes CO<sub>2</sub> substances.

## **FISCAL IMPACT:**

### House Bill 4885

As written, House Bill 4885 has an unknown impact on state revenues. Because the severance tax is based on the market prices and production of oil and natural gas, none of which is known in advance, a precise fiscal impact cannot be determined. The extent to which the severance tax rate cut makes CO<sub>2</sub> injection recovery methods financially viable determines whether the proposed legislation has a positive or negative effect on state revenues. As an example, if 100,000 barrels of oil are produced using this method each year, and the price of oil is \$100 per barrel, the tax revenue under current law would be \$660,000; under the proposed legislation the severance tax revenue would be \$400,000. If this oil would have been produced regardless of the tax rate, then state

revenues would have declined \$240,000. Conversely, if none of this oil would be produced under the current tax rate, then revenues would have increased. As a reference, the oil and gas severance tax currently generates approximately \$60 million in General Fund revenue per year.

House Bills 5254 & 5255

House Bills 5254 and 5255 would have no significant fiscal impact on the Department of Environmental Quality.

House Bills 5254, 5255, and 5274 would likely have a neutral fiscal impact on the Michigan Public Service Commission (PSC); PSC costs of reviewing applications and ruling on whether to approve construction and operation of pipelines to transport crude oil, petroleum, and (if HBs 5254, 5255, and 5274 are enacted) CO<sub>2</sub> are (would be) supported with revenue generated by Public Utility Assessments collected under the Costs of Regulating Public Utilities Act of 1972, which authorizes the PSC to prescribe fees to fund its regulatory responsibilities.

**BRIEF DISCUSSION OF THE ISSUES:**

As a package, the bills revise current laws regulating the transport of crude oil and petroleum by pipeline to include carbon dioxide substances and to provide a tax incentive for companies to use CO<sub>2</sub> to recover additional oil or natural gas from existing wells. Even with today's technologies, some oil remains in the bottom of wells. Enhanced oil recovery (EOR) methods are used to recover an additional 15-20 percent of product that would be otherwise unrecoverable. Using CO<sub>2</sub>, supporters say, reduces the demand for water in EOR operations and, by using and permanently storing sequestered CO<sub>2</sub>, reduces the amount of carbon dioxide released into the atmosphere. The lowered severance tax rate for CO<sub>2</sub> operations should provide an incentive for drilling companies to invest in the infrastructure needed to transport and store the CO<sub>2</sub> required for an operation.

The other bills in the package put the regulation of CO<sub>2</sub> pipelines under the oversight of the Michigan Public Service Commission, allow for eminent domain, authorize fair compensation for landowners and require companies to restore landowners' property after laying pipelines, and apply other regulations currently in place for crude oil and petroleum pipelines to CO<sub>2</sub> pipelines. Supporters say the bills DO NOT apply to hydraulic fracking and would be used in existing injection wells to recover oil and gas that would otherwise not be recovered. Thus, supporters see the bill package as a "Win-Win" for all by collecting taxes on oil or gas recovery projects that would not be collected today, increasing available supplies of oil and natural gas, and providing a way to use – and permanently remove – carbon dioxide from the atmosphere that would otherwise contribute to damaging the environment.

However, concerns have been raised that include the following:

- The bills create another situation in which a landowner's property may be seized under eminent domain, a process that has subjected some property owners to having little say over where pipelines would be located on their property.
- While use of CO<sub>2</sub> in EOR operations may remove some pollutants from the atmosphere, building a new transport infrastructure for transporting CO<sub>2</sub> is not without other environmental and safety concerns, such as the potential to release even more greenhouse gasses into the environment.
- Though initially projected to be used in existing wells, the bills could encourage certain new wells to be drilled that may not otherwise have been drilled due to the amount of oil or natural gas deemed unrecoverable by current methods. If so, drilling could be increased, even in pristine areas, resulting in negative environmental impacts.
- Tax breaks are being given to a business segment that enjoys high profits already. Some say our severance rates are already lower than many other states and so a reduced tax rate that lowers state revenue should not be given for enterprises that may result in future environmental damage that affects, and eventually costs, Michigan residents.

## POSITIONS:

The following entities testified in support of or indicated support for the bills on 1-28-14 and/or 2-4-14:

Michigan Department of Environmental Quality  
 CORE Energy  
 Merit Energy Company  
 Michigan Oil and Gas Association  
 Associated Petroleum Industries of Michigan  
 DTE Energy

The Michigan Environmental Council indicated a neutral position on House Bill 4885.

The Sierra Club/Michigan Chapter submitted written testimony in opposition to the bill package. (2-3-14)

Legislative Analyst: Susan Stutzky  
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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.